

January 20, 1993
REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL

POSTURE OF U.S.A. V. CITY OF SAN DIEGO
GIVING RISE TO FINANCING ISSUES

Pursuant to City Council Resolution No. R-280022 of May 26, 1992, the City Manager and City Attorney were directed to seek a modification of the pending Consent Decree commitments to conform with the "Consumers' Alternative" as specified in the resolution.

On July 10, 1992, after a full hearing on the issues was presented, the court issued an interim order specifying the following matters:

1. Construction of the facilities detailed in the Consumers' Alternative which provided for the North City reclamation plant and related facilities, Point Loma treatment plant improvements and improvement projects for the municipal sewer system.
2. Court commitment to subordinate all judicial remedies to the right of payment for the planned debt issuance.
3. Deferral of all non-Consumers' Alternative milestones for a period of nineteen (19) months.

Seeing the scope of the wastewater upgrade diminished and having the enforcement milestones deferred for nineteen (19) months, the Justice Department sought a motion for reconsideration on August 28, 1992 which was denied by Judge Brewster. Thereupon the Justice Department filed a notice of appeal in the Ninth Circuit Court of Appeals seeking to reverse Judge Brewster's July 10th ruling based on "abuse of discretion."

Twice the City through the City Attorney's Office, the City Manager and Councilmember Stallings went to Washington to dissuade the Justice Department from an appeal. It was pointed out that an appeal would endanger economical financing and the issues reviewed would be resolved by Judge Brewster by the Spring of 1993 and hence far earlier than a resolution on appeal. An October 15, 1992 offer to split the order into financing issues

and deferral of milestone issues was flatly rejected.

The appeal is now pending before the Ninth Circuit Court of Appeals, which has set a mandatory prebriefing conference for February 2, 1993 at 2:00 p.m. Thereafter a final briefing schedule will be set. However, resolution of the appeal is not envisioned until Fall of 1993 at the earliest.

The financial effect of the appeal is best described by the Manager. However, knowing that the presence of the appeal presents a cloud over previously planned financing mechanisms, the court was made aware of this problem at the last status conference on December 16, 1992. Judge Brewster acknowledged this cloud and, in pointed remarks to the Justice Department, indicated he would not compel a debt issuance under these circumstances and would not sanction the City for any missed milestones caused by lack of financing.

A list of the projects with their respective milestone dates as specified in the July 10, 1992 hearing is attached for your convenience.

Respectfully submitted,
JOHN W. WITT
City Attorney

TB:mb:452.1.1(043.1)

Attachment:1

RC-93-4